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Filing date: **07/10/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91190899
Party	Defendant Onsharp, Inc.
Correspondence Address	JOSEPH M SANDLIN PRESIDENT ONSHARP INC 474 45TH STREET SOUTH FARGO, ND 58103 UNITED STATES sandin.toni@dorsey.com
Submission	Answer
Filer's Name	Joseph M. Sandin
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Signature	/Joe Sandin/
Date	07/10/2012
Attachments	2012_07_10 TTAB Response to Opposer's Opposition to Set Aside Default.pdf (6 pages)(829007 bytes)

**In the matter of Trademark Application Serial No. 77/645,273 for the ONSHARP Mark
Application Date January 7, 2009**

Opposition No. 91190899

Applicant is responding to the new issue raised in Opposer's June 25 Opposition and respectfully requests that the Board grant Applicant's Motion to Set Aside Notice of Default of June 6, 2012 (June 6 Motion). In the June 25 Opposition, Opposer argues that Applicant has not acted in good faith in complying with discovery requests, and in addition, the June 6 Motion should not be granted as a result. This new issue is irrelevant to the June 6 Motion. The Motion to Set Aside Default was filed in response to the Notice of Default, which is based on and entered due to Applicant's inadvertent failure to file an Answer to the Amended Pleading. The Notice of Default is not instituted in connection with, nor is the Notice of Default dependent upon, the Motion to Compel Discovery, entered February 23, 2012, and to the request (now granted) to extend the discovery period on March 14, 2012.

Opposer's June 25 Opposition focuses on a new issue, which is irrelevant to Applicant's Motion of June 6, 2012. Opposer contends that Applicant has "not complied with this Board's order to provide discovery responses" and that this failure is grounds for Opposer "to file a motion for sanctions" and relies on this failure as a basis for denying Applicant's Motion of June 6, 2012.

On March 15, 2012, Opposer requested to extend the close of discovery for 60 days, moving the close of discovery until June 22, 2012, yet in the Opposition filed on June 25, 2012, Opposer states that Applicant "has not requested any extensions of time to Answer or Respond to Discovery" (Sharp Response, page 3). Applicant is confused by this assertion, because Applicant did not believe an extension was necessary per the March 14, 2012 phone call with Ms. De Luca requesting an extension for discovery and Opposer's actual request filed on March 15, 2012. See Sandin Declaration, page 1.

Applicant is also confused as to why Opposer would assert so strongly that Applicant lacks a good faith basis due to Opposer's assertion that Onsharp's belief as to the status of negotiations as ongoing was incorrect (Sharp Response, page 3). Applicant had believed in light of the March 14, 2012 telephone call from Ms. De Luca, as well as follow up emails between Ms. Toni Sandin and Ms. De Luca to set a time to discuss settlement, that a settlement conference call would be scheduled in the near future and did believe that Ms. De Luca and Opposer had actually intended to follow through with a conference call between the parties. Applicant did, in good faith, believe that settlement between the parties would be possible. See Sandin Declaration, pages 1-2.

Further, Opposer's June 25 Opposition focuses on the irrelevant and now moot issue of lack of discovery produced by Applicant prior to the March 15, 2012 extension of the discovery period and ignored the actual issue that would necessitate an Opposition to the June 6 Motion. Opposer did not address the real issue, which is whether or not Opposer will be prejudiced by an Order of the Board which would grant Applicant's Motion to Set Aside Notice of Default.

Opposer focuses on Applicant's failure to respond to the discovery request and proceeds to refute what Applicant has stated was its *belief* regarding a potential settlement, which was based on interactions between Ms. De Luca, Ms. Sandin and Mr. Sandin. See Sandin Declaration, pages 1-2. Opposer did not point to even a single reason why granting the Motion to Set Aside Notice of Default has or would prejudice Opposer. Applicant understands this

omission as supportive of Applicant's assertion on Page 3, Subsection B of the June 6 Motion, that indeed Opposer is not prejudiced by the Motion and thus respectfully requests the Board grant the June 6, 2012 Motion to Set Aside Notice of Default.

In view of the above it is respectfully requested that the Motion to Set Aside Notice of Default filed by Applicant on June 6, 2012 be granted as Applicant had indeed acted in good faith and did not consciously just simply ignore submitting an Answer. Rather, Applicant did not believe that an Answer was required.

Respectfully,

ONSHARP, INC.

Dated: 7-10-12

By: 

Joseph M. Sandin
President
474 45th Street South
Fargo, North Dakota 58103
Telephone: (701) 356-9010
Facsimile: (701) 356-9011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the matter of Trademark Application Serial No. 77/645,273 for the ONSHARP Mark
Application Date January 7, 2009**

Sharp Kabushiki Kaisha, a/t/a Sharp Corporation, Opposer,)	
)	
v.)	
)	
Onsharp, Inc.,)	
Applicant.)	
)	

Opposition No. 91190899

DECLARATION OF JOSEPH M. SANDIN

I, Joseph M. Sandin, declare as follows:

1. I am the President and Owner of Onsharp, Inc. I make this declaration based on personal knowledge as to the matters set forth below, in support of the Motion to Set Aside Notice of Default filed by Onsharp, Inc. on June 6, 2012 and also in support of the Response to Opposer Sharp Kabushiki Kaisha, a/t/a Sharp Corporation's ("Sharp") Opposition to said Motion to Set Aside Notice of Default.

2. Ms. De Luca, attorney for Sharp, called me at my office on March 14, 2012 and asked if we would agree to an extension of the discovery period. I informed her that we would agree to that. During this telephone call, Ms. De Luca indicated that her client wanted to get the matter settled and that they were not interested in dragging this out and incurring substantial legal fees. I agreed and told her that I was absolutely interested in coming to a settlement on this matter, but that there were some components of their initial settlement offer that were just not going to work for us to which she did not object to over the phone with me.

3. For example, during the March 14, 2012 telephone conversation, I referenced their insistence on me using Onsharp & Design Mark and how that was too restrictive for us. I do not recall what discussions we had on which version of the settlement agreement we would

negotiate from, and frankly, I am open to starting from either settlement agreement, the initial settlement agreement proposed by Ms. De Luca on behalf of Sharp or the amended settlement agreement proposed by us. I simply emphasized to her that if we are going to figure out a settlement that the two sides should arrange a conference call to talk through the issues and come to a settlement that we can both agree to. Ms. De Luca seemed to indicate that her client would be open to a conference call, but said that she would check with her client first and get back to us.

4. I do not agree with Opposer's claim that "no new negotiations (let alone positive developments) have occurred in well over one year" (page 1). The fact that Ms. De Luca proactively contacted me via telephone on March 14, 2012 and indicated that her client was interested in settlement was a positive development to me.

5. It is correct that the parties have not held any substantive settlement discussions as Ms. De Luca and Ms. Sandin have been working to arrange a conference call. However, on the first occasion when a time for a conference call had been agreed to (May 3, 2012), the call was cancelled by Ms. De Luca due to an apparent scheduling conflict of hers. When Ms. Sandin tried to reschedule the call for May 9, 2012, Ms. De Luca was non-responsive, but rather she sent us a Protective Order signed by Opposer, which to me indicated that further negotiation of a consent agreement was forthcoming. I do not understand why Sharp, via Ms. De Luca, would contact me directly to indicate that settlement is desired, work with Ms. Sandin to arrange a conference call to discuss settlement, but then cancel the scheduled conference call and not respond to further scheduling requests made by us.

6. It was clear to me that both parties were open to and were attempting to come to some type of settlement agreement and that it was up to scheduling with Ms. De Luca. It was my belief that upon conducting the conference call, the parties would be very close to an agreement. However, it is now my belief that Sharp purposely avoiding having the conference call until they see how the Board responds to the Motion to Set Aside Notice of Default.

Dated: 7-9-12

By: 
Joseph M. Sandin

CERTIFICATE OF SERVICE

I hereby certify that I am over 18 years of age, that I represent Applicant Onsharp, Inc. and that on July 10, 2012, a copy of the following:

- I. APPLICANT'S RESPONSE TO OPPOSER'S OPPOSITION TO
APPLICANT'S MOTION TO SET ASIDE NOTICE OF DEFAULT**
- II. DECLARATION OF JOSEPH M. SANDIN**

was sent via First Class Mail, postage prepaid to:

Robert W. Adams
Sheryl De Luca
NIXON & VANDERHY, P.C.
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808

I certify under penalty of perjury that the forgoing is true and correct. Executed on July 10, 2012.



Joseph M. Sandin
President
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